

105TH CONGRESS
2D SESSION

S. 2164

To amend title 49, United States Code, to promote rail competition, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 1998

Mrs. HUTCHISON introduced the following bill; which was read twice and
referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to promote rail
competition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surface Transpor-
5 tation Board Amendments of 1998”.

6 **SEC. 2. PROMOTION OF COMPETITION WITHIN THE RAIL**
7 **INDUSTRY.**

8 Section 10101 of title 49, United States Code, is
9 amended by—

1 (1) redesignating paragraphs (1) through (7) as
 2 paragraphs (2) through (8);

3 (2) inserting before paragraph (2), as redesign-
 4 nated, the following:

5 “(1) to encourage and promote effective com-
 6 petition within the rail industry;”;

7 (3) redesignating paragraphs (9) through (16)
 8 as paragraphs (10) through (17); and

9 (4) inserting before paragraph (10), as redesign-
 10 nated, the following:

11 “(9) to discourage artificial barriers to inter-
 12 change and car supply which can impede competition
 13 between shortline, regional, and Class I carriers and
 14 block effective rail service to shippers.”.

15 **SEC. 3. EXTENSION OF TIME LIMIT ON EMERGENCY SERV-**
 16 **ICE ORDERS.**

17 Section 11123 of title 49, United States Code, is
 18 amended by—

19 (1) striking “30” in subsection (a) and insert-
 20 ing “60”;

21 (2) striking “30” in subsection (c)(1) and in-
 22 serting “60”;

23 (3) striking the second sentence of subsection
 24 (c)(1) and inserting the following: “An action taken
 25 by the Board under subsection (a) of this section

1 may not remain in effect longer than 18 months (in-
 2 cluding the initial 60-day period), unless the Board
 3 requests an extension under paragraph (4).”; and

4 (4) adding at the end of subsection (c) the fol-
 5 lowing:

6 “(4) The Board may request up to 2 exten-
 7 sions, of not more than 6 months each, of the 18-
 8 month period under subsection (a) by submitting to
 9 the Congress a request in writing for such an exten-
 10 sion, together with an explanation of the reasons for
 11 the request. Such a requested extension goes into ef-
 12 fect unless disapproved by the Congress by concur-
 13 rent resolution. Any other extension requested by
 14 the Board will not go into effect unless the Congress
 15 approves it under the procedure established by sec-
 16 tion 4 of the Surface Transportation Amendments of
 17 1998.”.

18 **SEC. 4. APPROVAL PROCEDURE.**

19 (a) IN GENERAL.—Within 90 days (not counting any
 20 day on which either House is not in session) after a re-
 21 quest for a third or subsequent extension is submitted to
 22 the House of Representatives and the Senate by the Sur-
 23 face Transportation Board under section 11123(c)(4) of
 24 title 49, United States Code, an approval resolution shall
 25 be introduced in the House by the Majority Leader of the

1 House, for himself and the Minority Leader of the House,
 2 or by Members of the House designated by the Majority
 3 Leader and Minority Leader of the House; and shall be
 4 introduced in the Senate by the Majority Leader of the
 5 Senate, for himself and the Minority Leader of the Senate,
 6 or by Members of the Senate designated by the Majority
 7 Leader and Minority Leader of the Senate. The approval
 8 resolution shall be held at the desk at the request of the
 9 Presiding Officers of the respective Houses.

10 (b) CONSIDERATION IN THE HOUSE OF REPRESENT-
 11 ATIVES.—

12 (1) CONSIDERATION OF APPROVAL RESOLU-
 13 TION.—After an approval resolution is introduced, it
 14 is in order to move that the House resolve into the
 15 Committee of the Whole House on the State of the
 16 Union for consideration of the resolution. All points
 17 of order against the resolution and against consider-
 18 ation of the resolution are waived. The motion is
 19 highly privileged. A motion to reconsider the vote by
 20 which the motion is agreed to or disagreed to shall
 21 not be in order. During consideration of the resolu-
 22 tion in the Committee of the Whole, the first reading
 23 of the resolution shall be dispensed with. General de-
 24 bate shall proceed, shall be confined to the resolu-
 25 tion, and shall not exceed one hour equally divided

1 and controlled by a proponent and an opponent of
2 the resolution. The resolution shall be considered as
3 read for amendment under the five-minute rule.
4 Only one motion to rise shall be in order, except if
5 offered by the manager. No amendment to the reso-
6 lution is in order. Consideration of the resolution
7 shall not exceed one hour excluding time for re-
8 corded votes and quorum calls. At the conclusion of
9 the consideration of the resolution, the Committee
10 shall rise and report the resolution to the House.
11 The previous question shall be considered as ordered
12 on the resolution to final passage without interven-
13 ing motion. A motion to reconsider the vote on pas-
14 sage of the resolution shall not be in order.

15 (2) APPEALS OF RULINGS.—Appeals from deci-
16 sion of the Chair regarding application of the rules
17 of the House of Representatives to the procedure re-
18 lating to an approval resolution shall be decided
19 without debate.

20 (3) CONSIDERATION OF MORE THAN ONE AP-
21 PROVAL RESOLUTION.—It shall not be in order to
22 consider under this subsection more than one ap-
23 proval resolution under this section, except for con-
24 sideration of a similar Senate resolution (unless the
25 House has already rejected an approval resolution)

1 or more than one motion to discharge described in
2 paragraph (1) with respect to an approval resolu-
3 tion.

4 (c) CONSIDERATION IN THE SENATE.—

5 (1) REFERRAL AND REPORTING.—An approval
6 resolution introduced in the Senate shall be placed
7 directly and immediately on the Calendar.

8 (2) IMPLEMENTING RESOLUTION FROM
9 HOUSE.—When the Senate receives from the House
10 of Representatives an approval resolution, the reso-
11 lution shall not be referred to committee and shall
12 be placed on the Calendar.

13 (3) CONSIDERATION OF SINGLE APPROVAL RES-
14 OLUTION.—After the Senate has proceeded to the
15 consideration of an approval resolution under this
16 subsection, then no other approval resolution origi-
17 nating in that same House shall be subject to the
18 procedures set forth in this subsection.

19 (4) MOTION NONDEBATABLE.—A motion to
20 proceed to consideration of an approval resolution
21 under this subsection shall not be debatable. It shall
22 not be in order to move to reconsider the vote by
23 which the motion to proceed was adopted or re-
24 jected, although subsequent motions to proceed may
25 be made under this paragraph.

1 (5) LIMIT ON CONSIDERATION.—

2 (A) After no more than 2 hours of consid-
 3 eration of an approval resolution, the Senate
 4 shall proceed, without intervening action or de-
 5 bate (except as permitted under paragraph (9)),
 6 to vote on the final disposition thereof to the
 7 exclusion of all motions, except a motion to re-
 8 consider or table.

9 (B) The time for debate on the approval
 10 resolution shall be equally divided between the
 11 Majority Leader and the Minority Leader or
 12 their designees.

13 (6) NO MOTION TO RECOMMIT.—A motion to
 14 recommit an approval resolution shall not be in
 15 order.

16 (7) DISPOSITION OF SENATE RESOLUTION.—If
 17 the Senate has read for the third time an approval
 18 resolution that originated in the Senate, then it shall
 19 be in order at any time thereafter to move to pro-
 20 ceed to the consideration of an approval resolution
 21 for the same special message received from the
 22 House of Representatives and placed on the Cal-
 23 endar pursuant to paragraph (2), strike all after the
 24 enacting clause, substitute the text of the Senate ap-
 25 proval resolution, agree to the Senate amendment,

1 and vote on final disposition of the House approval
 2 resolution, all without any intervening action or de-
 3 bate.

4 (8) CONSIDERATION OF HOUSE MESSAGE.—

5 Consideration in the Senate of all motions, amend-
 6 ments, or appeals necessary to dispose of a message
 7 from the House of Representatives on an approval
 8 resolution shall be limited to not more than 1 hour.
 9 Debate on each motion or amendment shall be lim-
 10 ited to 30 minutes. Debate on any appeal or point
 11 of order that is submitted in connection with the dis-
 12 position of the House message shall be limited to 15
 13 minutes. Any time for debate shall be equally divided
 14 and controlled by the proponent and the majority
 15 manager, unless the majority manager is a pro-
 16 ponent of the motion, amendment, appeal, or point
 17 of order, in which case the minority manager shall
 18 be in control of the time in opposition.

19 (d) DEFINITIONS.—For purposes of this section—

20 (1) APPROVAL RESOLUTION.—The term “ap-
 21 proval resolution” means only a concurrent resolu-
 22 tion of either House of Congress which is introduced
 23 as provided in subsection (a) with respect to the ap-
 24 proval of a request from the Surface Transportation

1 Board under section 11123(a)(4) of title 49, United
 2 States Code.

3 (e) RULES OF HOUSE OF REPRESENTATIVES AND
 4 SENATE.—This section is enacted by the Congress—

5 (1) as an exercise of the rulemaking power of
 6 the House of Representatives and the Senate, re-
 7 spectively, and as such they are deemed a part of
 8 the rules of each House, respectively, but applicable
 9 only with respect to the procedure to be followed in
 10 that House in the case of approval resolutions de-
 11 scribed in subsection (c); and they supersede other
 12 rules only to the extent that they are inconsistent
 13 therewith; and

14 (2) with full recognition of the constitutional
 15 right of either House to change the rules (so far as
 16 relating to the procedure of that House) at any time,
 17 in the same manner and to the same extent as in
 18 the case of any other rule of that House.

19 **SEC. 5. PROCEDURAL RELIEF FOR SMALL RATE CASES.**

20 (a) DISCOVERY LIMITED.—Section 10701(d) of title
 21 49, United States Code, is amended by—

22 (1) inserting “(A)” in paragraph (3) before
 23 “The Board”; and

24 (2) adding at the end thereof the following:

1 “(B) Unless the Board finds that there is a compel-
2 ling need to permit discovery in a particular proceeding,
3 discovery shall not be permitted in a proceeding handled
4 under the guidelines established under subparagraph
5 (A).”.

6 (b) ADMINISTRATIVE RELIEF.—Not later than 180
7 days after the date of enactment of this Act, the Surface
8 Transportation Board shall—

9 (1) review the rules and procedures applicable
10 to rate complaints and other complaints filed with
11 the Board by small shippers;

12 (2) identify any such rules or procedures that
13 are unduly burdensome to small shippers; and

14 (3) take such action, including rulemaking, as
15 is appropriate to reduce or eliminate the aspects of
16 the rules and procedures that the Board determines
17 under paragraph (2) to be unduly burdensome to
18 small shippers.

19 (c) LEGISLATIVE RELIEF.—The Board shall notify
20 the Committee on Commerce, Science, and Transportation
21 of the Senate and the Committee on Transportation and
22 Infrastructure of the House of Representatives if the
23 Board determines that additional changes in the rules and
24 procedures described in subsection (b) are appropriate and
25 require commensurate changes in statutory law. In mak-

1 ing that notification, the Board shall make recommenda-
2 tions concerning those changes.

3 **SEC. 6. MARKET DOMINANCE STANDARD.**

4 The Surface Transportation Board shall complete a
5 rulemaking, as outlined in STB Ex Parte No. 575, to de-
6 termine whether and to what extent it should consider
7 product and geographic competition in making market
8 dominance determinations.

9 **SEC. 7. REVENUE ADEQUACY.**

10 The Surface Transportation Board shall reexamine,
11 as outlined in STB Ex Parte No. 575, its standards and
12 procedures for determining adequate railroad revenue lev-
13 els under section 10704(a)(2) of title 49, United States
14 Code. In carrying out its reexamination, the Board is di-
15 rected to seek recommendations of a panel of three disin-
16 terested economists on the proper standards to apply. The
17 panel shall submit its report and recommendations simul-
18 taneously to the Surface Transportation Board and to the
19 Senate Committee on Commerce, Science, and Transpor-
20 tation and the House Committee on Transportation and
21 Infrastructure.

22 **SEC. 8. BOTTLENECK RATES.**

23 (a) THROUGH ROUTES.—Section 10703 of title 49,
24 United States Code, is amended—

1 (1) inserting “(a) IN GENERAL.—” before
2 “Rail carriers”; and

3 (2) adding at the end thereof the following:

4 “(b) CONNECTING CARRIERS.—When a shipper and
5 rail carrier enter into a contract under section 10709 for
6 transportation that would require a through route with a
7 connecting carrier and there is no reasonable alternative
8 route that could be constructed without participation of
9 that connecting carrier, the connecting carrier shall, upon
10 request, establish a through route and a rate that can be
11 used in conjunction with transportation provided pursuant
12 to the contract, unless the connecting carrier shows that—

13 “(1) the interchange requested is not operation-
14 ally feasible; or

15 “(2) the through route would significantly im-
16 pair the connecting carrier’s ability to serve its other
17 traffic.

18 The connecting carrier shall establish a rate and through
19 route within 21 days unless the Board has made a deter-
20 mination that the connecting carrier is likely to prevail
21 in its claim under paragraph (1) or (2).”.

22 (b) BOARD’S AUTHORITY TO PRESCRIBE DIVISION
23 OF JOINT RATES.—Section 10705(b) of title 49, United
24 States Code, is amended by striking “The Board shall”

1 and inserting “Except as provided in section 10703(b), the
2 Board shall”.

3 (c) COMPLAINTS.—Section 11701 of title 49, United
4 States Code, is amended—

5 (1) by redesignating subsection (c) as sub-
6 section (d); and

7 (2) by inserting after subsection (b) the follow-
8 ing:

9 “(c) Where transportation over a portion of a through
10 route is governed by a contract under section 10709, a
11 rate complaint must be limited to the rates that apply to
12 the portion of the through route not governed by such a
13 contract.”.

14 **SEC. 9. SIMPLIFIED DISPUTE RESOLUTION.**

15 Within 180 days after the date of enactment of this
16 Act, the Surface Transportation Board shall promulgate
17 regulations adopting a simplified dispute resolution mech-
18 anism with the following features:

19 (1) IN GENERAL.—The simplified dispute reso-
20 lution mechanism will utilize expedited arbitration
21 with a minimum of discovery and may be used to de-
22 cide disputes between parties involving any matter
23 subject to the jurisdiction of the Board, other than
24 rate reasonableness cases that would be decided
25 under constrained market pricing principles.

1 (2) APPLICABLE STANDARDS.—Arbitrators will
2 apply existing legal standards.

3 (3) MANDATORY IF REQUESTED.—Use of the
4 simplified dispute resolution mechanism is required
5 whenever at least one party to the dispute requests.

6 (4) 90-DAY TURNAROUND.—Arbitrators will
7 issue their decisions within 90 days after being ap-
8 pointed.

9 (5) PAYMENT OF COSTS.—Each party will pay
10 its own costs, and the costs of the arbitrator and
11 other administrative costs of arbitration will be
12 shared equally between and among the parties.

13 (6) DECISIONS PRIVATE; NOT PRECEDEN-
14 TIAL.—Except as otherwise provided by the Board,
15 decisions will remain private and will not constitute
16 binding precedent.

17 (7) DECISIONS BINDING AND ENFORCEABLE.—
18 Except as otherwise provided in paragraph (8), deci-
19 sions will be binding and enforceable by the Board.

20 (8) RIGHT TO APPEAL.—Any party will have an
21 unqualified right to appeal any decision to the
22 Board, in which case the Board will decide the mat-
23 ter de novo. In making its decision, the Board may
24 consider the decision of the arbitrator and any evi-

1 dence and other material developed during the arbi-
2 tration.

3 (9) MUTUAL MODIFICATION.—Any procedure or
4 regulation adopted by the Board with respect to the
5 simplified dispute resolution may be modified or
6 eliminated by mutual agreement of all parties to the
7 dispute.

8 **SEC. 10. PROMOTION OF COMPETITIVE RAIL SERVICE OP-**
9 **TIONS.**

10 Section 11324 of title 49, United States Code, is
11 amended—

12 (1) by striking “and” in paragraph (4) of sub-
13 section (b);

14 (2) by striking “system.” in paragraph (5) of
15 subsection (b) and inserting “system; and”;

16 (3) by adding at the end of subsection (b) the
17 following:

18 “(6) means and methods to encourage and ex-
19 pand competition between and among rail carriers in
20 the affected region or the national rail system.”; and

21 (4) by inserting after the second sentence in
22 subsection (c) the following: “The Board may im-
23 pose conditions to encourage and expand competition
24 between and among rail carriers in the affected re-
25 gion or the national rail system, provided that such

1 conditions do not cause substantial harm to the ben-
2 efits of the transaction to the affected carriers or the
3 public.”.

4 **SEC. 11. HOUSEHOLD GOODS COLLECTIVE ACTIVITIES.**

5 Section 13703(d) of title 49, United States Code, is
6 amended by inserting “(other than an agreement affecting
7 only the transportation of household goods, as defined on
8 December 31, 1995)” after “agreement” in the first sen-
9 tence.

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